

REMARKS

Claim 7 is amended as supported by original claim 1 and in the specification as filed at page 9, lines 6-25. Claim 14 is amended to depend from claim 7. Claim 55 is amended to insert a comma after the word “flour” in line 3 to correct a minor informality. No new matter is presented.

Claims 1-6, 42-50 and 61 are allowed.

Claims 7, 9, 38, 40, 41, 51 and 59 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Xue *et al.*

The Examiner states the claims are product-by-process claims. In the Office Action dated October 28, 2008, the Examiner asserted that the “fil2 phenotype” is a yeast strain that has a deleted GPR1 gene (paragraph 298 of the published application, Pub. No. 2004/0175831A1). The Examiner further asserts that Xue *et al.* teaches a *S. cerevisiae* strain with a deletion in the GPR1 gene.

Applicants traversed the rejection and pointed out that Xue *et al.* describes technical methods carried out in order to delete a gene in strains and the present invention is different from Xue *et al.* because in the present invention the modifications are mutations of genes and not deletions.

Applicants further noted that the published application, Pub. No. 2004/0175831A1, explains that the deletion is used to verify that the phenotype of thermoresistance is actually associated with a mutation of the gene *GPR1*. Specifically, the specification states that the

Further, as explained in paragraph 288, the mutated strain *fil2* of the invention is a mutation and not a deletion. Consequently the present invention is different from Xue *et al.* and therefore is not anticipated by Xue *et al.*

Additionally, claim 7 is amended herein to recite the characteristic features of the claimed yeast strains of the *fil* phenotype of the present invention as recited in claim 1 which is allowed. Xue *et al.* does not disclose, teach or suggest a yeast strain of the *fil* phenotype having the recited characteristics.

Accordingly claim 7 is not anticipated by Xue *et al.* and withdrawal of the rejection is respectfully requested.

Claims 10, 12, 14, 52-59 and 62 are objected to as being dependent upon a rejected base claim, but are indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10, 12, 14, 52-59 and 62 depend directly, or indirectly, from claim 7 and are patentable for at least the same reasons.

Accordingly, Applicants respectfully request withdrawal of the objection to the claims.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.114(c)
U.S. Application No.: 10/796,166

Attorney Docket No.: Q80427

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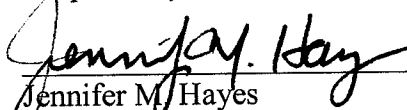
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Respectfully submitted,


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